

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

HENRY B. GARNIER,

Petitioner,

v.

MAGGIE MILLER-STOUT,

Respondent.

Case No. C06-5285RBL

ORDER DIRECTING AN ANSWER

The petitioner in this action is seeking federal habeas corpus relief pursuant to both 28 U.S.C. § 2254 and 28 U.S.C. § 2241. This case has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636 (b) (1) (A) and 636 (b) (1) (B) and Local Magistrates' Rules MJR 3 and MJR 4.

Before the court is a letter from the Washington State Attorney General's Office asking the court to sua sponte dismiss this action. (Dkt. # 16) Counsel indicates the petition deals with a condition of confinement, "air quality", and should be filed as a Civil Rights action. (Dkt. # 16). Accordingly counsel asks the court to dismiss the petition "sua sponte."

While the court agrees that petitioner is attempting to challenge air quality, a condition of

1 confinement, petitioner has included two grounds for review in his petition. (Dkt. # 6). In the first  
2 ground he alleges ineffective assistance of counsel and is challenging his conviction. The second  
3 ground, air quality at a facility, is an issue that respondent can address in a motion or answer to the  
4 petition. The court declines to recommend dismissal sua sponte.

5 The clerk's Office is directed to send a copy of this order to petitioner and respondents  
6 counsel.

7 DATED this 18<sup>th</sup>, day of September, 2006.

8  
9 /S/ J. Kelley Arnold

10 J. Kelley Arnold

11 United States Magistrate Judge  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27